

January 19, 2010

**OFFICE OF THE HEARING EXAMINER
CITY OF RENTON**

REPORT AND RECOMMENDATION

APPLICANT/OWNER: Charles Conner
3001 Mountain View Avenue N
Renton, WA 98056

Odyssey Dock Replacement
LUA-09-145, ECF, SM, SMV, SMV

LOCATION: 3001 Mountain View Avenue N

SUMMARY OF REQUEST: The applicant is requesting an Environmental (SEPA) Review and approval of a Shoreline Substantial Development Permit and two Shoreline Variances for the construction of a 166-foot long, fully grated dock with an extension in association with an existing single-family residence on the shore of Lake Washington.

SUMMARY OF ACTION: Development Services Recommendation: Approve

DEVELOPMENT SERVICES REPORT: The Development Services Report was received by the Examiner on December 29, 2009.

PUBLIC HEARING: After reviewing the Development Services Report, examining available information on file with the application, field checking the property and surrounding area; the Examiner conducted a public hearing on the subject as follows:

MINUTES

*The following minutes are a summary of the January 5, 2010 hearing.
The legal record is recorded on CD.*

The hearing opened on Tuesday, January 5, 2010, at 8:59 a.m. in the Council Chambers on the seventh floor of the Renton City Hall. Parties wishing to testify were affirmed by the Examiner.

The following exhibits were entered into the record:

<u>Exhibit No. 1:</u> Yellow file containing the original application, proof of posting, proof of publication and other documentation pertinent to this request.	<u>Exhibit No. 2:</u> Zoning Map
<u>Exhibit No. 3:</u> Existing Dock/Pilings	<u>Exhibit No. 4:</u> Existing Dock Elevations
<u>Exhibit No. 5:</u> Proposed View A-A and Proposed Section Framing A-A	<u>Exhibit No. 6:</u> Proposed View B-B and Proposed Section Framing B-B

<u>Exhibit No. 7:</u> Proposed View C-C and Proposed Section Framing C-C	<u>Exhibit No. 8:</u> ERC Determination
<u>Exhibit No. 9:</u> ERC Mitigation Measures	<u>Exhibit No. 10:</u> ERC Advisory Notes
<u>Exhibit No. 11:</u> Shoreline Substantial Development Permit	<u>Exhibit No. 12:</u> Proposed New Dock and Pilings Plan (but NOT AS AMENDED)
<u>Exhibit No. 13:</u> Hand Drawing with Corrected Dimensions	<u>Exhibit No. 14:</u> Site Map

The hearing opened with a presentation of the staff report by Gerald Wasser, Associate Planner, Community and Economic Development, City of Renton, 1055 S Grady Way, Renton, Washington 98057. The exhibits were presented and explained. The original proposal was for a replacement dock, it was proposed at 166' long ranging from 7' 10-1/2" wide on the shoreline side to 5' 10-1/2" wide waterward. There was originally proposed a 19' 10-1/2" by 22' new dock extension. There are currently 44 wood pilings some of which support a solid wood existing dock. Those would all be removed and replaced by a 166' long fully grated dock supported by 26 steel pilings. The original proposal showed those pilings supporting the extension as well.

The property is 28,670 square feet located in the R-8 Zone along the shore of Lake Washington. All equipment, materials and personnel would be transported to the site by barge or truck. All new dock components would be placed using a barge mounted crane. A silt containment curtain would be placed during the removal and construction operations to help control short term disturbance of sediments. All work would take place within the established window for this area, July 16 through December 31. A planting plan would be required to show native planting within the first 8 feet of the landward part of the site.

On December 22, staff received an e-mail from the applicant describing proposed changes to the project. Overall those changes reduced the size of the dock and extension.

The Environmental Review Committee issued a Determination of Non-Significance – Mitigated, with five measures. No appeals were filed.

The proposed changes suggest a reduction in the overall area of the proposed dock from 1,660 square feet to approximately 1,188 square feet. The portion of the dock originally proposed at 7' 10-1/2" was reduced to approximately 6'. The overall length of the proposed dock would remain at 166 feet. The extension was reduced in width from 19' 10-1/2" x 22' to 8' x 22'. The area of the proposed dock would be reduced from 444 square feet to approximately 176 square feet. The first set of pilings landward would be moved closer to shore and the next three pairs of pilings would be changed from 8" in diameter to 4" in diameter.

The reason for these changes was in response to a memo the applicant received from the Army Corps of Engineers in response to their evaluation of the endangered species in this area and the maintenance of the aquatic habitat.

The approval of two shoreline variances would be necessary; one for the 166' dock length, 80' is permitted by the Shoreline Master Program. The second variance would be for the 172 square feet for the dock extension, 100 square feet is permitted.

The five mitigation measures were discussed.

There are six criteria for the Shoreline Variance and this project appears to meet all the criteria. The proposal further meets the criteria in WAC 173-27-170.

Staff evaluated the length variance and the area variance and believes the applicant meets those criteria.

The Examiner questioned the length of the dock as it seems to be out of compliance with the code.

Mr. Wasser stated that the extraordinary circumstances for the length variance seems appropriate due to the water depth, four feet at the ordinary high water line. That is fairly shallow depth for this size boat as well as the draft of many others. Regarding the area variance, the proposal would be replacing an existing 8' x 22' extension.

The second portion of the variance criteria pertaining to the preservation and enjoyment of the property, the subject property is along a private shoreline, the proposed 166' dock would be no longer than some of the existing docks in the area. This owner should have the same property rights as the others. The area dimensions are similar to what exists now, the applicant has stated that other docks in the vicinity have similar or larger extensions.

The steel pilings would be an improvement over the old existing wood pilings and would protect the resources and ecology of the shoreline.

The Examiner expressed concern that every property owner along the shore could come in and request a larger dock. This variance request is setting a precedent that could bring about more problems than need be.

Mr. Wasser stated that a Shoreline Substantial Development Permit is also required for the proposed dock.

Charles Conner, 3001 Mt. View Avenue N, Renton 98056 stated that the extraordinary circumstances are primarily due to the shallow water, it is less than four feet at the end of the existing dock. The original dock on the property was the same length as the current dock. The water depth at 166' is nine feet at ordinary high water. A smaller sailboat with a five foot keel will not fit on the existing dock. It is dangerous to dive off the existing dock due to the shallow water.

From the previous dock there are old wood pilings and a sheet pile wall that completely surrounded the previous dock. A boat did run into that wall. The submerged pilings are marked, but at the ordinary high water line, they are completely submerged and present a danger. There was a new drawing showing instead of being 19' 10-1/2" wide it would be 7' 10-1/2" and the width would go from 8 feet to 5' 10-1/2". The new dock would be 5' 10-1/2" all the way to the end, which is substantially less than what was in the original proposal.

The property could be divided into 5 lots and this dock would serve the entire parcel. There would not be another house on the lake, but the back of the lot would be divided.

Further, the Biological assessment shows that the sheet pile wall that is currently in the water does stop the migration of salmon. With the new dock, this wall would be removed.

The depth of water is a detriment to boats, a 35 foot sailboat has a keel of five to six feet and requires a water depth of seven to eight feet. This new dock would be only nine feet at the very end of the dock.

Kayren Kittrick, Community and Economic Development stated that there is a sewer line in the lake close to the shoreline and is very shallow and might even be exposed in some areas. A locate would be required prior to any

work on the new dock and pilings. If water is to be put onto the dock, they would be required to meet current codes for a cross connection.

The **Examiner** called for further testimony regarding this project. There was no one else wishing to speak, and no further comments from staff. The hearing closed at 9:47 a.m.

FINDINGS, CONCLUSIONS & RECOMMENDATION

Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. The applicant, Charles Connor, filed a request for a two variances from the Shoreline master Program.
2. The yellow file containing the staff report, the State Environmental Policy Act (SEPA) documentation and other pertinent materials was entered into the record as Exhibit #1.
3. The Environmental Review Committee (ERC), the City's responsible official issued a Determination of Non-Significance - Mitigated (DNS-M).
4. The subject proposal was reviewed by all departments with an interest in the matter.
5. The subject site is located 3001 Mountain View Avenue North. The subject site is located west of Lake Washington Boulevard and sits on the shore of Lake Washington.
6. The map element of the Comprehensive Plan designates the area in which the subject site is located as suitable for the development of detached single family homes, but does not mandate such development without consideration of other policies of the Plan.
7. The subject site is currently zoned R-8 (Single Family - 8 dwelling units/acre).
8. The subject site was annexed to the City with the adoption of Ordinance 1800 enacted in October 1959.
9. The subject site is approximately 28,670 square feet. A portion of the lot is submerged under the surface of the lake.
10. The subject site is currently served by a 100 foot long dock and an L-shaped dock extension that is approximately 22 feet long by 8 feet wide. These are covered with solid wood planking. There are 44 wood pilings and approximately 200 lineal feet of wood sheet pilings that run from the lake bottom to the surface. The sheet piling forms a solid barrier for its length. There is also a freestanding boat lift.
11. The applicant proposed replacing the existing 100 long wooden dock and its "L" extension. As originally proposed the new dock would be 166 foot (160 feet over water) long and would be 7 feet, 10.5 inches wide (narrowing to 5 feet, 10.5 inches). The originally proposed dock extension would be 19 feet, 10.5 inch wide by 22 feet long. Both structures would be fully-grated. Prior to the public hearing the applicant proposed modifying the dimensions of both the dock and extension. The length of the dock would remain at 166 feet. The dock would be 5 feet, 10.5 inches wide. The extension would be 7 feet, 10.5 inches by 22 feet or approximately 176 square feet, 76 square feet larger than permitted.
12. The dock would be supported by 26, 8 inch or 12 inch diameter steel pilings. The sheet pilings and

older piles would be removed as would the solid deck surfaces.

13. There is a sewer line located in or along the lake bed adjacent to the uplands portion of the lot. Its location must be carefully monitored when doing any installation for this proposal.
14. Staff also warned about assuring that any water service on the dock does not cross-connect.
15. Docks are limited to 80 feet in length and 8 feet in width. Dock extensions are limited to 100 square feet in area (Section 4-3-090L.12.e.ii) The existing structures, both the dock and the extension, are non-conforming uses. The applicant has requested two variances. The applicant sought one variance to allow the dock length to exceed 80 feet and sought the second variance to allow the dock extension to exceed 100 square feet in area.
16. WAC 173-27-170:
 - (1) Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances the applicant must demonstrate that extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.
 - (2) Variance permits for development and/or uses that will be located landward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030 (2)(b), and/or landward of any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following:
 - (a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property;
 - (b) That the hardship described in (a) of this subsection is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions;
 - (c) That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program and will not cause adverse impacts to the shoreline environment;
 - (d) That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;
 - (e) That the variance requested is the minimum necessary to afford relief; and
 - (f) That the public interest will suffer no substantial detrimental effect.

CONCLUSIONS:

1. A shoreline variance may be granted if the proposal meets all of the following criteria found in Section 4-9-190.I:

4. Variances:

- a. Purpose: Upon proper application, a substantial development permit may be granted which is at variance with the criteria established in the Renton Master Program where, owing to special conditions pertaining to the specific piece of property, the literal interpretation and strict application of the criteria established in the Renton Master Program would cause undue and unnecessary hardship or practical difficulties.
- b. Decision Criteria: The fact that the applicant might make a greater profit by using his property in a manner contrary to the intent of the Master Program is not, by itself, sufficient reason for a variance. The Land Use Hearing Examiner must find each of the following:
 - i. Exceptional or extraordinary circumstances or conditions applying to the subject property, or to the intended use thereof, that do not apply generally to other properties on shorelines in the same vicinity.
 - ii. The variance permit is necessary for the preservation and enjoyment of a substantial property right of the applicant possessed by the owners of other properties on shorelines in the same vicinity.
 - iii. The variance permit will not be materially detrimental to the public welfare or injurious to property on the shorelines in the same vicinity.
 - iv. The variance granted will be in harmony with the general purpose and intent of this Master Program.
 - v. The public welfare and interest will be preserved; if more harm will be done to the area by granting the variance than would be done to the applicant by denying it, the variance will be denied, but each property owner shall be entitled to the reasonable use and development of his lands as long as such use and development is in harmony with the general purpose and intent of the Shoreline Management Act of 1971, and the provisions of this Master Program.
 - vi. The proposal meets the variance criteria in WAC 173-27-170.

2. While all of the criteria are equally important and all must be satisfied, attention should be focused on Section (b)(i) where it states: "Exceptional or extraordinary circumstances or conditions applying to the subject property." The water depth is quite shallow. Even smaller boats can touch bottom at the 100 foot length where the water is approximately 4 feet deep. Apparently, the applicant's boat needs approximately 6.5 feet. Safe moorage is not achieved until the dock is extended 160 feet from shore. The extreme shallow water is an exceptional circumstance and does justify the variance for dock length.
3. On the other hand the dock extension suffers in two areas: non-conforming uses are to be eliminated when possible, the larger than permitted extension that now exists cannot be justified under existing code requirements and there are no extraordinary or exceptional circumstances that justify an extension exceeding code limits. The redevelopment of the dock area requires that the development conform to current standards. There are no "exceptional or extraordinary circumstances or conditions" related to the lot, the water depth or any other constraints that justify a larger extension. Approving such an extension in light of the prohibitory language of the Shoreline Master Program would be granting the applicant a special privilege. It would also create a precedent and if approved without exceptional circumstances would only encourage or countenance similar exceptions for any other lake front property and this would violate Criterion v., above, in that approval would create that undue precedent. The code was adopted with language limiting dock extensions to no more than 100 square feet and unless exceptional circumstances can be demonstrated, the code should be followed. Nothing justifies a larger extension in this case. Since the extension cannot meet the first criterion, no further discussion of the

dock extension will be considered.

4. The approval of a dock 160 feet out over the water (total length 166 feet) is justified in order to allow the applicant reasonable use of not only their property but their advantage along a lake shore. Others along the lake have reasonable access to the water due to the greater depth of the water within the normal limits of 80 feet. In the immediate vicinity of the subject site, longer docks have been installed due to the shallow water depth.
5. With other longer docks in the area and the shallow water depth, the long dock will not unreasonably impede navigation. Other long docks in this area already force boats further from shore than 80 feet and again, only a few watercraft can navigate such shallow water.
6. The Master Program is designed to allow reasonable use of the shoreline and its waters. Variances are permitted under the appropriate circumstances. The proposed longer dock is in harmony with the code.
7. Approval of the longer dock will not create an undue precedent as longer docks have been already permitted to reach deeper water. It will not create more harm than advantage.
8. The final criterion is actually additional criteria found in WAC 173-27-170 and those restate many of the discussed criteria as well as including language that the variance will not constitute a grant of special privilege. As indicated, the proposed dock satisfies the criteria but the oversized dock extension, if approved would constitute the grant of a special privilege.

DECISION OF THE CITY OF RENTON and RECOMMENDATION to the Department of Ecology:

The variance for a dock extension in excess of 100 square feet is denied.

The variance for a dock of 166 feet, 160 feet over water, is approved subject to the following conditions:

1. The applicant shall comply with the mitigation measures imposed by the Environmental Review Committee in its Determination of Non-Significance – Mitigated issued on November 30, 2009.
2. That prior to forwarding the Shoreline Substantial Development Permit to the Washington Department of Ecology for final action the applicant shall submit revised Exhibits 4, 5, 6, and 7 which reflect the changes described in Section G.1 of the staff report. These exhibits shall be subject to the review and approval of the Planning Division project manager.

ORDERED THIS 19th day of January 2010.

FRED J. KAUFMAN
HEARING EXAMINER

TRANSMITTED THIS 19th day of January 2010 to the parties of record:

Gerald Wasser	Kayren Kittrick	Charles Conner
City of Renton	City of Renton	3001 Mountain View Avenue N
Community and Economic Dev.	Community & Economic Dev.	Renton, WA 98056

TRANSMITTED THIS 19th day of January 2010 to the following:

Mayor Denis Law	Dave Pargas, Fire
Jay Covington, Chief Administrative Officer	Larry Meckling, Building Official
Julia Medzegian, Council Liaison	Planning Commission
Marty Wine, Assistant CAO	Transportation Division
Gregg Zimmerman, PBPW Administrator	Utilities Division
Alex Pietsch, Economic Development	Neil Watts, Development Services
Jennifer Henning, Development Services	Janet Conklin, Development Services
Stacy Tucker, Development Services	Renton Reporter

Pursuant to Title IV, Chapter 8, Section 100G of the City's Code, **request for reconsideration must be filed in writing on or before 5:00 p.m., February 2, 2010** Any aggrieved person feeling that the decision of the Examiner is ambiguous or based on erroneous procedure, errors of law or fact, error in judgment, or the discovery of new evidence which could not be reasonably available at the prior hearing may make a written request for a review by the Examiner within fourteen (14) days from the date of the Examiner's decision. This request shall set forth the specific ambiguities or errors discovered by such appellant, and the Examiner may, after review of the record, take further action as he deems proper.

An appeal to the City Council is governed by Title IV, Chapter 8, Section 110, which requires that such appeal be filed with the City Clerk, accompanying a filing fee of \$250.00 and meeting other specified requirements. Copies of this ordinance are available for inspection or purchase in the Finance Department, first floor of City Hall. **An appeal must be filed in writing on or before 5:00 p.m., February 2, 2010**

If the Examiner's Recommendation or Decision contains the requirement for Restrictive Covenants, the executed Covenants will be required prior to approval by City Council or final processing of the file. You may contact this office for information on formatting covenants.

The Appearance of Fairness Doctrine provides that no ex parte (private one-on-one) communications may occur concerning pending land use decisions. This means that parties to a land use decision may not communicate in private with any decision-maker concerning the proposal. Decision-makers in the land use process include both the Hearing Examiner and members of the City Council.

All communications concerning the proposal must be made in public. This public communication permits all interested parties to know the contents of the communication and would allow them to openly rebut the evidence. Any violation of this doctrine would result in the invalidation of the request by the Court.

The Doctrine applies not only to the initial public hearing but to all Requests for Reconsideration as well as Appeals to the City Council.